Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 187 of 2003 (M/B)

Smt. Tulsi Devi Pande
W/o Late Sri Purushottam Pande,
R/o Village-Dholi Gaon,
Gram Panchayat Dholi Gaon,
Block Okhalkanda, Tehsil Dhari,
District-Nainital.

..... Petitioner

Versus

1. State of Uttaranchal through Secretary Education,
2. Uttaranchal Board of Basic Education through its Secretary,
3. Basic Education Officer, Nainital,
4. District Inspector of Schools, Nainital,
5. State of U.P. through Secretary Education,
6. Account General, Govt. of U.P., Allahabad.

..... Respondents

Sri M.C. Pande, learned counsel for the petitioner,
Learned Standing Counsel for the respondent Nos. 1 to 5.
Learned Standing Counsel for the respondent No.6/State of U.P.

Date: July 03, 2006.

Hon'ble P.C.Verma, J.
Hon'ble B.S. Verma,J.

By means of this writ petition the petitioner has prayed for writ of mandamus to command the respondents to pay the family pension to the petitioner with effect from 23.03.1991 alongwith interest on the same and be further pleased to direct them to give all benefits and increments of family pension to the petitioner.

2. The husband of the petitioner late Sri Purshottam Pande S/o Sri Ganga Dutt Pande, R/o Village Dholi, Gaon, Post Office Dholi Gaon, Tehsil Dhari,

District Nainital retirned as Head Master from Junior High School Bhira Pani, Tehsil Dhari District Nainital. After his retirement pension was sanctioned to him by the Government Order dated 17.12.1965 and Sri Pande continuously received the pension till the date of his death i.e. 23.02.1991. The pension to the petitioner was paid under the G.O. dated 17.12.1965 which came into force with effect from 1st October 1964. By the Government Order dated 17th December, 1965, triple benefit scheme was introduced by the State Government and according to this scheme the following three benefits were made available to the teachers/employees of the Government aided institutions:-

(i) Contributory provident fund,

(ii) Compulsory life insurance

(iii) Pension including family pension.

3. The husband of the petitioner was Head Master of the Junior High School which was run by the local bodies and was covered under the Clause (3) of the Government Order dated 17.12.1965 and husband of the petitioner opted for this scheme and under this scheme the pension was paid to the petitioner till his death. The petitioner has relied on the Government Order and stated in the writ petition that since the family pension was payable for 10 years, therefore she was entitled for family pension from the date of the death of her husband for 10 years.

4. In the counter affidavit it has been clearly stated that petitioner's case for payment of family pension was not covered under the Government Order dated 17.12.1965 and in view of Rule 24 of the Rules appended with the Government Order.

5. Family pension is dealt with separately and sub rule (1) & (2) of Rule 24 of the Rules which are relevant to this case, read as under:-

"24. (1) A family pension not exceeding the Amount specified in sub rule (2) below may be granted for a period of 10 years to the family of an employer.

Who dies either while still in service of alter retirement after completion of not less than twenty years of qualifying service.

Provided that the period of payment of family pension shall in no case extend beyond a period of five years from the date on which the deceased employee would have attained the age of superannuation.

Notes – In case where the qualifying service is less than the prescribed minimum the deficiency should not be condoned."

(2) The amount of family pension would be:

(a) In the event of death while in service one-half of the superannuation pension which would have been admissible to the employee had he retired on the date following the date of his death and
(b) In the event of death after retirement one-half of the pension sanctioned to the employee at the time of his retirement."

6. Proviso appended to Clause (1) of Rule 24 of the Rules provides that the period of family pension shall in no case extend beyond the period of five years from the date on which the deceased employee would have attained the age of superannuation. Read this exception with the main clause it is evident that 10 years are available only to those employees who die in harness and maximum 5 years from the date of superannuation is attracted in case of a superannuated person dies before completion of 5 years of payment of his pension.

7. In the present case, the petitioner has died after 15 years and for 15 years he received pension. The case of the petitioner is not covered under the

Government Order. Therefore, the petition is devoid of merit and is dismissed. No order as to costs.

(B.S.Verma,J.) **(P.C. Verma,J.)**

03.07.2006
P.Singh